UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

SAXON HALL MANAGEMENT LLC,

AND ITS SUCCESSORS **Case: 29–CA–167016**

SILVERSTONE PROPERTY GROUP, LLC,
62-60 99TH STREET OWNER II, LLC, AND
CALIFORNIA CROWN ENERGY SERVICES, INC.
D/B/A ABLE SERVICES, AS JOINT EMPLOYERS

RESPONDENT

and

LUIS RIVERA, an Individual

CHARGING PARTY

Jamie D. Cosloy, Esq. and Genaira L. Tyce, Esq.,
for the General Counsel.
Robert H. Bernstein, Esq. and Michael J. Slocum, Esq.,
for Respondent Saxon Hall Management, LLC.
Daniel Morris, Esq.,
for Respondent Silverstone Property Group, LLC
and 62–60 99th Street Owner II, LLC
Frank Birchfield, Esq., for Respondent California Crown
Energy Services, Inc. d/b/a Able Services
Luis Rivera, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JEFFREY P. GARDNER, Administrative Law Judge. The charge in Case 29–CA–167016 was filed on January 4, 2016. The first amended charge was filed on February 5, 2016. A second amended charge was filed on March 28, 2016. A third amended charge was filed on April 25, 2016. A complaint was initially issued on May 25, 2016.

Thereafter, a fourth amended charge was filed on July 25, 2016. A fifth amended charge was filed on September 8, 2016. And a sixth amended charge was filed on December 7, 2016. The amended complaint was issued December 7, 2016.

The amended complaint alleges that on or about October 16, 2015, Respondent Saxon Hall Management, LLC[1] violated Section 8(a)(3) and (1) of the Act by issuing the Charging Party Luis Rivera multiple written warnings in retaliation for his protected union and concerted activity.[2]

The complaint further alleges that on or about October 29, 2015, Respondent violated Section 8(a)(3) and (1) by unlawfully terminating Rivera's employment in retaliation for his protected union and concerted activity. The complaint also alleges that Respondent violated Section 8(a)(1) by denying Rivera's request to be represented by the Union during an investigatory interview, and by preventing Rivera from speaking with his coworkers.

Beginning January 18, 2017, and ending February 7, 2017, I conducted a trial at the Board's Brooklyn Regional Office, at which all parties were afforded the opportunity to present their evidence. On April 26, 2017, the General Counsel and Respondent each filed timely briefs, with Respondents Silverstone Property Group, LLC, and 62–60 99th Street Owner II, LLC joining in Respondent's submission. Respondent California Crown Energy Services, Inc. d/b/a Able Services did not submit a posthearing brief.[3]

Upon consideration of the entire record and the briefs filed, I make the following

FINDINGS OF FACT

I. JURISDICTION

Based on the pleadings herein, Respondent admitted and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. In addition, based on the pleadings herein, and the stipulations made at trial (Jt. Exhs. 1 and 2), I find the remaining Respondents also are employers engaged in commerce within the meaning of Section 2(2), (6), & (7) of the Act.

[1] Respondent Saxon Hall Management, LLC, which was the Charging Party's employer at the time of the events that are at issue in this case, was the only Respondent to provide a substantive defense at trial to the allegations of discrimination. The other Respondents, all of which filed answers to the amended complaint and participated by appearance of counsel at the trial, did not present a separate defense. As such, for purposes of this decision, I will hereafter refer to Respondent Saxon Hall Management, LLC simply as "Respondent" and will identify more specifically when I am referring to any of the other named Respondents.

[2] Abbreviations used in this decision are as follows: "Tr." for the Transcript, "Jt. Exh." for joint exhibits, "GC Exh." for the General Counsel's exhibits and "R. Exh." for Respondent's Exhibits. Specific citations to the transcript and exhibits are included only where appropriate to aid review, and are not necessarily exclusive or exhaustive.

[3] In addition to the timely initial briefs filed by the parties on April 26, 2017, Respondent filed a "Supplemental Submission" dated May 19, 2017, purporting to respond to alleged personal attacks it attributed to the General Counsel's initial brief. By letter dated May 30, 2017, the General Counsel objected to Respondent's submission, correctly noting that there is no specific provision in the Board's Rules and Regulations for such supplemental filing, and requesting that I not consider any facts or arguments therein. Although I read and considered Respondent's supplemental submission, nothing therein alters my findings of fact or legal conclusions in this matter.

II. ALLEGED UNFAIR LABOR PRACTICES

Background

Respondent is a limited liability company which operated a residential apartment building in Rego Park, New York, known as the Saxon Hall building, from July 2013 through June 2016. To service its building tenants, Respondent employed a superintendent, four doormen, a handyman, and five porters, one of whom filled in as a doorman on weekends. These employees were and continue to be represented by Stationary Engineers, Firemen, Maintenance and Building Services Union, Local 670 (herein "the Union"), a labor organization within the meaning of Section 2(5) of the Act, and are covered by a collective-bargaining agreement.[4]

Charging Party Luis Rivera had been employed at the Saxon Hall building since 2004, and specifically by Respondent from July 2013 until his discharge on October 29, 2015. Rivera was a doorman, and over the course of his employment had served as a steward for the Union for different periods totaling eight years, most recently December 2014. He also had lived in the building for approximately 17 years, and still lived there at the time of his discharge.

Rivera testified at the hearing regarding his employment with Respondent, and the events leading up to his disciplines and discharge. Also testifying at the hearing were Respondent's Property Manager, Joe Chajmovicz, and its Senior Asset Manager Josh Gottlieb, Superintendent Zaim Curovic, Doorman Andrew Martin, Union Secretary/Treasurer Dennis Romano, and a Saxon Hall building tenant, Richard DeJesus.

Respondent assumed management of the Saxon Hall apartment building in 2013, at which time the incumbent employees, including Rivera, were introduced to Chajmovicz and Gottlieb. Chajmovicz oversaw all management aspects of the building directly onsite. Gottlieb was not directly involved onsite, as he was responsible for indirectly overseeing approximately 2500 units across 15 to 20 buildings at any given time. As such, the unit employees reported directly to Chajmovicz, who in turn reported directly to Gottlieb.

The Porter opening and Rivera's interest in applying

Rivera testified that soon after Respondent had taken over management of the building in July 2013, Chajmovicz made various comments to him to the effect that he was considered a problem, including saying, "we don't need a shop steward. I don't need the headache," and "it would be my priority to take you out as shop steward." I found Rivera's testimony in this regard to be credible. He appeared very sincere in his belief that Respondent, and Chajmovicz in particular, had it in for him almost from the start, at least in part because of his role as shop steward.[5]

The timing of certain disciplines Rivera received, almost immediately after he engaged in formal union and/or concerted activity, only strengthened his belief that Respondent had anti-

[4] On or about July 1, 2016, Respondent Able, which had contracted with Respondent Silverstone to provide staffing and management of the building service and maintenance work, assumed the existing collective-bargaining agreement between Respondent and the Union. (Jt. Exh. 2.)

[5] Nor was it only Chajmovicz who Rivera had reason to believe was unhappy with him in his role as shop steward. Indeed, in October 2014, Gottlieb wrote Rivera a letter chastising him for how he conducted himself as shop steward, accusing him of "constant spying" and "ratting out" his coworkers.

union animus toward him. For example, on December 3, 2013, Rivera and some other employees had gathered for a meeting with their union representative onsite to discuss workplace concerns, and as the meeting was ending, Rivera observed that Chajmovicz was outside the door of the room where they were meeting, and could see, if not also hear, the individuals gathered there. The very next day, December 4, 2013, Rivera received three written warnings, for what were a total of five separate alleged infractions.

Two of the warnings were for "congregating in the lobby with two other employees discussing personal matters"—one for doing so on December 3 at 2:30 p.m. (GC Exh. 5(a)), and one for doing so on December 4 at 10:50 a.m. (GC Exh. 5(b).) The third warning was allegedly for three incidents of Rivera's having been rude to tenants, on October 15, November 6, and 28, 2013. (GC Exh. 5(c).)

Thereafter, on April 3, 2014, Rivera filed a charge of discrimination with the New York State Division of Human Rights, arising out of the December 2013 warnings.[6] Though he had received no discipline in the intervening 4 months, within a week of that filing, he received two more written warnings. On April 8, 2014, he was disciplined for allegedly turning away a prospective tenant (R. Exh. 10), and the following day, April 9, 2014, he was disciplined again, this time for allegedly revealing personal information about one tenant to another. (R. Exh. 11.)

Later that year, on November 25, 2014, Rivera filed a charge with the NLRB, objecting to the aforementioned letter Gottlieb had written, in which he accused Rivera of "spying" and "ratting out" his coworkers. (GC Exh. 18.) Three weeks later, Rivera was again disciplined, this time for allegedly not writing apartment numbers with a marker on tenants' packages. While none of these disciplines are the subject of the instant matter,[7] and I make no specific finding regarding the underlying facts of those past disciplines, I do note there to be a distinct pattern of Rivera's receiving multiple disciplines in the immediate aftermath of his engaging in protected activity.

In any event, it is clear that by the summer of 2015, Rivera had become extremely frustrated with his treatment at the job. It was at this time that Rivera learned that a porter position had become available in the building, which he was interested in applying for. Specifically, Rivera observed an individual working as a porter in place of the regular porter for that shift. Although a porter job would ordinarily be considered a step down from doorman, I found Rivera to be credible when he testified that the reduced stress of that role compared to what he felt he had been experiencing as a doorman was something he was genuinely interested in.

Having been a union steward, Rivera was familiar with the posting requirements for job openings at the building. So, he brought the new porter position to the attention of his union representative at that time, Mike Mesa, telling him that he wanted to apply for the job. Mesa told Rivera that he would tell Respondent to post the position, and advised Rivera to let Chajmovicz know he was interested in applying. Rivera also requested that his union representative set up a meeting with Respondent to discuss the position.

Later that day, a flyer entitled "Available Porter Position" was posted which read, in part, "Position for Saxon Hall Porter is now available" and "[a]nyone who wishes to apply should see

[6] At that time, Rivera had attributed Respondent's motives to include both antiunion and anti-Hispanic animus.

[7] Nor were any of these prior disciplines grieved by Rivera. No grievance had ever been filed prior to the October 28, 2015 grievance at issue in this matter.

the manager." (GC Exh. 2.) There was no mention on the flyer of a requirement to submit a written application. That same day, Rivera called and emailed Chajmovicz to tell him that he wanted to apply for the porter position.

The next day, Rivera met with Chajmovicz and the superintendent, Zaim Curcovic, in the employee locker room, and repeated his desire for the porter position. Although Chajmovicz laughed at Rivera, and told him he would be crazy to leave a doorman position for a porter position, Rivera assured Chajmovicz he was serious, and that he wanted the porter position. However, according to Rivera, Chajmovicz continued laughing, and left the room. Chajmovicz testified that he told Rivera during this meeting that he - Rivera and no one else - must submit his request to be a porter in writing, which Rivera denies.

I credit Rivera's version that there was no such instruction by Chajmovicz that Rivera submit his request in writing. Not only did I find Rivera to be a more credible witness overall, I am convinced if Chajmovicz had required only Rivera to do so, Rivera would have complained then and now that he was being singled out for differential treatment.

Rivera was not offered the porter position, and was never approached about taking the position. Instead, in or about August 2015, shortly after meeting with Rivera and Mesa, Respondent gave the position to a less senior employee. When Rivera learned that the position had been filled by someone else, he reported this to Mesa, who told Rivera that he would speak to Chajmovicz, and set up an appointment to meet with him to discuss the porter position.

October 15, 2015 Meeting and its Aftermath

After a considerable delay, a meeting was eventually arranged with Rivera, Mesa and Chajmovicz on October 15, 2015, to discuss Rivera's continuing interest in the porter position. When the three men met, Chajmovicz asked why the meeting was being held, and Rivera told him it was regarding the porter position. Chajmovicz responded that the position had already been filled, and for the first time, stated that Rivera needed to have applied in writing for the position.

At that point, there was some arguing, with Rivera showing Chajmovicz the posting for the porter position, which made no mention of a need to apply in writing. However, despite Rivera's protest that the process was unfair, Chajmovicz just told Rivera that the position had been filled, and that was that. The meeting ended with Rivera telling Chajmovicz he was going to go to the NLRB, and his telling Mesa in front of Chajmovicz that he wanted Mesa to file a grievance on his behalf, something that had never been done before. Chajmovicz responded by saying he did not care.

The very next day, October 16, 2015, Respondent issued three separate written warning notices to Rivera.[8] One was for purportedly not assisting a tenant up the stairs with her

[8] Rivera denies actually being given these 3 warning notices at the time, which was not unusual. Rivera denies receiving various other prior written warnings, and Chajmovicz could not specifically recall giving him certain prior warnings either. Nevertheless, Respondent acknowledges issuing them, but denies they were related in any way to Rivera's meeting or activity the day before, as it denies any relationship between Rivera's protected activity and any of the disciplines it has issued.

packages on October 15, 2015, and the other two were for having and/or using a cellphone while on duty at two different times of day on October 16, 2015.[9]

The Master keys

The Saxon Hall building kept a set of keys in an unlocked drawer at the doorman station, including a master key, a broker and/or construction master key, and various other keys to the laundry room, the superintendent's laundry room, the storage room and a closet. The master key unlocks the door to every apartment, top and bottom. The broker key and construction master key unlock only the bottom lock of every apartment, and are used to access vacant apartments. It is undisputed that these two keys are routinely given to non-employees to access those apartments as needed, though there was no standard procedure followed for doing so.

On Saturday, October 24, 2015, the master key apparently went missing from the doorman station. Superintendent Zaim Curovic testified that the doorman on duty, Paul Ciereszko, advised him as much at approximately 10:30 a.m. that morning. Curovic was on his way out of the building, where a friend was waiting for him, so he told Ciereszko to make sure he looks for it. Ciereszko did not testify. Nor was there testimony about any emergency search, report to police, calls to a locksmith, or even contacts made to every employee to inquire about the missing key over that weekend.

Indeed, it was not until 2 days later, on Monday, October 26, 2015, when the master key remained apparently unaccounted for that Curovic even reported to Chajmovicz that the key was missing. Chajmovicz testified that on that day, he called a few building employees to inquire whether they knew anything about the master key. Although Rivera had begun working that day, for some reason Chajmovicz did not initially inquire of Rivera about the key. Indeed, it was not until just after noon on October 26, 2015, that Rivera first learned about the reportedly missing key when he received a phone call from another doorman, who asked Rivera to check the drawer for the master key. When Rivera checked, he found the key among various scattered keys in the drawer.

Later that afternoon, October 26, 2015, Rivera was approached by a girl known to him as a tenant in the building, who did not have her apartment key. The girl reportedly needed to use the bathroom, and although her mother was home, the girl did not want to knock or ring the bell to her apartment, because there was a baby sleeping inside. Rivera gave the girl the master key to unlock her apartment, which she returned approximately 2 minutes later. This exchange, which took place in the building lobby, was captured on video, and is not in dispute.

Shortly thereafter, Chajmovicz and Curovic approached Rivera about what they apparently still believed was the missing key. Rivera opened the drawer in the doormen's desk, pulled out the master key, and showed it to them. Chajmovicz told Rivera "good job," returned the key to the drawer, and walked away.

The following morning, Chajmovicz sought to review video footage of the lobby in what he described was an effort to discover how and when, or presumably whether, the master key

[9] Whether employees were allowed to carry cellphones on duty is unclear. On the one hand, Respondent maintains that "per employee handbook Employees may not use or carry cell phones while at work." But, on the other hand, as discussed later in this decision, Respondent itself maintains that doormen were required to contact the Superintendent, either by radio *or cell phone* in situations involving tenant lockouts.

had gone missing. However, due to technical difficulties, he testified to being unable to view footage from either Saturday or Sunday, when the key was reported to have gone missing. Instead, he was only able to view a short segment of video from the afternoon of Monday, October 26, 2015, which contained the footage of Rivera's handing the key to tenant, as described above.

Respondent's witnesses—Gottlieb, Chajmovicz, Curovic, and doorman Andrew Martin—all testified that doormen were not permitted to relinquish custody of the master key to a nonemployee under any circumstances. Respondent identified a "Doorman Do's and Don'ts"—a 2-page list of best practices which it maintains was kept under glass at the doormen's desk, albeit in a different form than the only version it produced at trial. (GC Exh. 10.)[10]

Included among the 20 something items listed on this document was a bullet point describing rules to follow in case of a tenant lockout. Notably, one of those rules was "you must log it in the incident report book, date, time apt # and the person." Another of the rules stated, "[u]nder NO circumstances should any employee open the door for a nonresident or give keys to any non-employee." There is no mention whether violations of either of these rules would be a "capital infraction."[11]

Although it is undisputed that tenant lockouts occur with some regularity at the building, there was not a single entry in Respondent's incident report book for a tenant lockout for the entire period from September 8, 2011, when the log was started, until November 9, 2015, — over 4 years without an entry, until less than 2 weeks after Rivera testified the "Doorman Do's and Don'ts" document was placed at the doormen's desk. Given the language of the putative document, that doormen "must" log all tenant lockouts, and the lack of anyone having actually done so, I can only conclude that whether or not this document was displayed at the doormen's desk, and in what specific form, this was not a rule that was particularly enforced.[12]

As to the blanket prohibition on giving keys to nonemployees,[13] neither the General Counsel nor Rivera appear to dispute that as a general proposition, the master key was not to be handed out to just anyone in any situation. However, Rivera credibly testified that it was not uncommon, in certain situations, and dating back to before Respondent took control of the building, for doormen to give tenants known to them the master key when they were locked out. He acknowledged that he had done so, including on this most recent occasion.

That testimony was corroborated by a tenant, Richard DeJesus, who testified that he had lived in the building for approximately 5 to 6 years, and that he had been locked out of his

[10] The General Counsel objected to the admission of this document because it was not initially turned over in response to its subpoena, because it did not appear in its original form, and because there was disputed testimony over how consistently it was displayed at the desk, if at all, prior to Rivera's discharge. I admitted the document over those objections for what limited use it might serve.

[11] In December 2014, another employee was disciplined for what Respondent labeled a "capital infraction," namely showing up an hour late, visibly intoxicated. That employee was sent home for the day, and issued a disciplinary notice, indicating further infractions would result in suspension and/or termination. (R. Exh. 22a.) Neither this employee nor any other was ever discharged by Respondent until Rivera.

[12] I also note that Respondent's Work Rules and Job Description (GC Exh. 8, p. 12) lists what it describes as "Twelve Most Important Rules to Follow," none of which make any mention of keys.

[13] The term "keys" in the Doorman Do's and Don'ts is neither defined nor restricted to the master key. No one disputes that doormen very specifically do give certain "keys" to nonemployees, including, e.g., brokers and contractors.

apartment on more than one occasion, and that at least twice, a doorman had given him the master key to let himself in. In both instances, DeJesus described the same process—he asked the doorman for the key, and was given the key without showing identification, and without needing to be escorted to his apartment. He returned the key a few minutes later without incident. He identified Andrew Martin as one of the doormen who had given him a key. Martin acknowledged unlocking DeJesus's door on more than one occasion, but denied ever giving him a key.

I found DeJesus to be very credible. A disinterested party to this matter, who still lives in the building, and so whose interest is arguably in not upsetting his landlord, DeJesus came across as thoughtful, earnest and forthright in describing his personal experience during past lockouts. Martin, by contrast, while firmly denying that he ever gave DeJesus a key, seemed hesitant in his answers. For example, when asked if he knew DeJesus, he initially responded, "Not offhand, but I think I kind of know who it is." He then proceeded to identify DeJesus's wife by name, the floor they used to live on and the floor to which they later moved. But when asked if DeJesus was a tenant in the building, his response was: "Yeah, I think so." I do not find his denial credible.

Despite that background, Chajmovicz testified that upon viewing the video of Rivera giving a tenant a key, he was "appalled," "flabbergasted," and "infuriated" because the key was not supposed to have been given to a nonemployee. Chajmovicz also testified, without any logical explanation, that he suspected Rivera was playing a joke, or "trying to get other guys in trouble." He testified to thinking "this guy's got to go . . . I can't have him working as a doorman." However, that was not the action he decided to take.

Rather, Chajmovicz issued Rivera another written warning, which he prepared on October 27, 2015. (GC Exh. 4.) It was marked "First Warning" and "Second Warning" and stated: "On 10/26/15 you gave the master keys to a tenant. This is serious violation [sic] and also putting all tenants in danger." The warning continued with a "Plan for Improvement: Never give out keys to tenants." And, it closed with "Consequences of Further Infractions: Suspension." As with the October 16, 2015 warning notices, the October 27, 2015 warning was not delivered to Rivera at the time. It was, however, emailed to the Union that same day.

The Events Leading up to Rivera's termination

One day after Chajmovicz decided to issue Rivera the October 27, 2015 warning notice, and sent that discipline to the Union, on October 28, 2015, the Union's president, Dennis Romano, faxed a grievance report to Chajmovicz, objecting to Respondent's failure to respond to Rivera's application for the porter position, which Chajmovicz claims not to have received. (GC Exh. 3.) Chajmovicz confirmed that the fax number this grievance was sent to was accurate, but stated that his faxes get delivered to one of two administrative assistants, who then forward them to him. Neither of those individuals testified.

In addition to not receiving Romano's October 28, 2015 grievance, Chajmovicz maintains that on the evening of October 27, 2015, despite no additional information or alleged conduct on Rivera's part, he called Gottlieb to recommend to him that Rivera be fired. Chajmovicz testified that he changed his mind about Rivera's discipline after speaking with Mesa from the Union. In response, Gottlieb testified that he had to see the video for himself before accepting Chajmovicz' recommendation and/or making that decision. So, Gottlieb claims

to have viewed the video on the morning of October 28, 2015, also purportedly earlier than the porter grievance would have been delivered that day.[14]

The following day, on October 29, 2015, Rivera reported to work, as usual, at 7 a.m., and observed the new sign entitled "Doorman Do's and Don'ts" under the glass on top of the doorman station. He also observed that the various keys were laid out individually, rather than on a ring. The doorman he was relieving, Andrew Martin, told Rivera to count the keys, and pointing to the new "Doorman Do's and Don'ts," told Rivera that "this is a new rule about keys being in the lock box."[15] Martin then instructed Rivera on how to log in his initials and the number of keys he received, and where a new lockbox was installed in which to keep the keys.

After working most of his shift that day, Rivera was summoned to meet with Chajmovicz that afternoon at around 2:15 p.m. in his basement office. When he arrived there, Chajmovicz and Gottlieb were both waiting for him. Upon entering the conference room, Rivera stated "it looks like I need a union representative," to which Gottlieb responded "no." Rivera stated that they were violating his rights, and that he was entitled to be represented, but Gottlieb again said "no." It is not disputed that Rivera requested union representation for the meeting.

Gottlieb began the meeting by stating that the master key went missing over the past weekend, and Rivera interrupted to say that he had no knowledge of a missing key. Gottlieb resumed talking, repeating that the master key had gone missing, that they appeared 2 days later, and that it was a security breach when Rivera gave the master key to a tenant. Gottlieb then said to Rivera, "You're going to be terminated. You're fired." Rivera asked Gottlieb if he was going to terminate all the doormen because it was common practice for doormen to give tenants the master key, and Gottlieb replied "no, just you."

Rivera asked for termination papers, and Gottlieb said they would be mailed to him. Rivera asked if they had been prepared, and Gottlieb said no, and repeated that they would be mailed to him. Gottlieb then instructed Rivera not to enter any employee room or speak to any building employees while they were working, as he was now only a tenant in the building. Rivera was then escorted out of the office.

The Events following Rivera's termination

Immediately after his termination, Rivera called Union President Romano, and told him what had happened, and that he wanted the Union to file another grievance, which the Union did that afternoon. Romano faxed a second Grievance Report to Chajmovicz, objecting to Rivera's termination, to the same fax number he had used the day before. Again, he received a confirmation of receipt. This time, Chajmovicz acknowledged receiving the grievance, and a meeting was scheduled for November 3, 2015, for Romano, Chajmovicz, and Rivera.

Chajmovicz met with Romano and Rivera on November 3, 2015, for a grievance meeting at the Saxon Hall building. Romano testified that he discussed with Chajmovicz that they would hold Rivera's porter grievance in abeyance, pending resolution of the termination grievance. Chajmovicz testified that he never had any such conversation, because, as Respondent

[14] In his testimony, Gottlieb alternately: (1) denied being aware of Rivera's October 28, 2015 grievance before deciding to terminate him (Tr. 1026); and (2) admitted to being aware of that grievance before Rivera was terminated (Tr. 1059). I find this inconsistency on such a crucial point to severely undermine his credibility.

[15] On this subject, Martin corroborated that at the very least there was a new, edited version of this document created around this time.

maintains, he was unaware of the porter grievance at the time. Chajmovicz insisted repeatedly that no such conversation took place, until he was confronted with audio which clearly revealed that Romano's version was correct, and that both grievances were addressed. Rather than acknowledge being mistaken on this point, Chajmovicz became defensive and evasive, unwilling to confirm any recollection of the meeting.

ANALYSIS

A. Respondent violated 8(a)(3) and 8(a)(1) of the Act on October 16, 2015, when it issued three written warnings to Rivera, and Respondent has not met its *Wrightline* burden.

In *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board set forth its causation test for cases alleging violations of the Act turning on employer motivation. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision. Once accomplished, the burden then shifts to the employer to demonstrate that the same action would have taken place notwithstanding the protected conduct.

Here, Respondent issued three written warnings to Rivera on October 16, 2015, just 1 day after Rivera met with Romano and Chajmovicz regarding the porter position. This followed a pattern of Respondent's issuing multiple discipline to Rivera in the immediate aftermath of Rivera's formal union activity or making formal complaints. It had previously happened in December 2013, again in April 2014, and then again in December 2014.

Moreover, only one other employee, in September of 2014, appears ever to have been issued any discipline for using or carrying a cellphone while on duty. Indeed, in its defense of having later discharged Rivera, it is Respondent's own contention that doormen at times are required to use their personal cellphones to call the superintendent in the event of a tenant lockout. So, it goes without saying that doormen are permitted to carry a cellphone on duty, notwithstanding language to the contrary in Respondent's employee handbook. Yet, here Rivera was written up twice, without any apparent investigation, for allegedly using his cellphone to send personal emails.

Accordingly, I find that it strains credulity to accept at face value that after issuing no discipline to any employee for using a cellphone in over a year, that suddenly, the day after Rivera exercised his Section 7 rights by meeting with management alongside his union representative, that suddenly, Rivera would get two write-ups for this conduct.

The third of the three warnings that day was similarly questionable, combining multiple alleged infractions, including being rude to a delivery man, and inattentive to a tenant, both on October 15, 2015, though Chajmovicz did not write up the warning until the day after, which was also after the contentious meeting with Rivera. I found Rivera's denial of these accusations credible, and Chajmovicz' support of them not so.

It is longstanding Board law that animus need not be proven by direct evidence; it can be inferred from the record as a whole. *Fluor Daniel, Inc.*, 304 NLRB 970 (1991). I find the combination of timing, the spurious nature of the disciplines, and the rapid-fire three disciplines in a 24-hour period to support a finding that these October 16, 2015 warnings were in retaliation

for Rivera's continued pursuit of the porter position, against Chajmovicz' wishes. Accordingly, I find that General Counsel has met its prima facie burden that these disciplines were unlawful.

I further find that Respondent has not met its burden to demonstrate that the same actions would have taken place notwithstanding the protected conduct. Indeed, I specifically find that these warnings would not have been issued were it not for Rivera's having brought his Union representative to the prior day's meeting with Chajmovicz, challenging his being bypassed for the porter position, and threatening both a first-ever formal grievance[16] and a Board charge.

Accordingly, I find that Respondent violated Section 8(a)(3) or (1) of the Act when it issued three warning notices to Rivera on October 16, 2015, and therefore, recommend that those warning notices be rescinded.

B. Respondent did not violate 8(a)(3) and 8(a)(1) of the Act on October 27, 2015, when it issued a written warning to Rivera for giving the Master Key to a tenant.

Respondent issued a written warning to Rivera on October 27, 2015, in the aftermath of the weekend in which the master key had apparently gone missing from the doormen's desk. Chajmovicz testified that he was "infuriated" with Rivera, and that very day, he wrote up Rivera's discipline, in which he described Rivera's conduct as a "serious violation." Unlike the previous warnings, there was no evidence of any union activity by Rivera immediately prior to this one.

It is apparent from the records of discipline produced by Respondent that there are various written rules in this particular workplace that are periodically enforced. While no one had ever been disciplined for giving out the master key in the past, despite evidence that it has occurred, it is essentially undisputed that doormen are not generally supposed to give the key out to nonemployees.

In the case of the October 27, 2015 written warning prepared by Chajmovicz, I find it entirely credible that in the immediate aftermath of the master key having gone missing, and Chajmovicz' having come upon specific evidence of Rivera's having violated a written rule relating to keys that very day, however loosely enforced that rule may have been previously, that Rivera, or any other employee in these circumstances, would be written up. And, indeed, that is exactly what Chajmovicz initially did.

Accordingly, while the General Counsel can demonstrate a prima facie case that the October 27, 2015 written warning was unlawful, I find that Respondent has met its burden to show that this discipline would have occurred even in the absence of Rivera's protected activity.

C. Respondent did not violate 8(a)(1) of the Act on October 29, 2015, when it refused to permit Rivera to have a representative for a noninvestigatory meeting.

An employee in a unionized workplace has the right, under Section 7 of the Act, to refuse to submit, without union representation, to an investigatory interview by his employer that may reasonably lead to discipline. *NLRB v. J. Weingarten, Inc*., 420 U.S. 251, 256–257 (1975); *IBM Corp*., 341 NLRB 1288 (2004). As the Supreme Court observed in *Weingarten*, this is an important right that "safeguard[s] not only the particular employee's interest, but also the

[16] It is noteworthy that no grievance had ever been filed in this workplace to this point, as it supports the finding that this threat was an unusually strong one in these circumstances.

interests of the entire bargaining unit by exercising vigilance to make certain that the employer does not initiate or continue a practice of imposing punishment." Id. at 260.

However, an employee's *Weingarten* rights apply only to *investigatory* interviews. Those rights do not extend to a meeting held solely for the purpose of communicating to an employee a final decision to impose a certain discipline, which was made prior to the meeting. *Baton Rouge Water Works Co.*, 246 NLRB 161 (1979). Moreover, in order to invoke the right to have a union representative present for a meeting with their employer, an employee must reasonably believe that the investigation could result in disciplinary action being taken against them. *Weingarten*, at 257.

Here, Respondent called Rivera to a meeting on October 29, 2015, to convey to him that he was being terminated. It is undisputed that Rivera requested to have a representative present with him for the meeting, and that Respondent denied that request. However, there is no evidence that this was an investigatory interview. Rivera himself contends that prior to this meeting, he was unaware of any potential discipline related to the missing master key.

Moreover, the General Counsel does not point to any evidence that either Chajmovicz or Gottlieb ever asked Rivera a single question during their meeting, or that either intended to. The testimony of all three witnesses present confirmed that the meeting did not include any interrogation at all. Rather, all three witnesses testified that the meeting consisted of Rivera's being told that he was terminated, including the alleged reason for the termination. Under those circumstances, *Weingarten* simply does not apply.

Accordingly, I find that Respondent did not violate 8(a)(1) of the Act on October 29, 2015, when it refused to permit Rivera to have a representative for a noninvestigatory meeting

D. Respondent violated Section 8(a)(3) and (1) of the Act on October 29, 2015, when it discharged Rivera, and Respondent has not met its *Wrightline* burden.

Had the discipline of Rivera consisted of the October 27, 2015 write up alone, I would find that the Respondent had not discriminated against Rivera in disciplining him. However, the discharge in this case presents a separate set of circumstances, and a classic dual motive situation that compels a more detailed *Wright Line* analysis for determining when an allegedly discriminatory action violates the Act. As discussed briefly above, in order to prove a violation, the General Counsel must first make a prima facie showing sufficient to support an inference that protected conduct was a motivating factor in the employer's terminating of the alleged discriminatees. *Wright Line*, 251 NLRB 1083 (1980), 10 enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399-403 (1983).

The General Counsel must initially show the employee's protected activity was a motivating factor in the decision to terminate. See *Coastal Sunbelt Produce, Inc. & Mayra L. Sagastume*, 362 NLRB No. 126, slip op. at 1 (2015). Establishing unlawful motivation requires proof that: "(1) the employee engaged in protected activity; (2) the employer was aware of the activity; and (3) the animus toward the activity was a substantial or motivating reason for the employer's action." *Consolidated Bus Transit, Inc*., 350 NLRB 1064, 1065 (2007), enfd. 577 F.3d 467 (2d Cir. 2009).

If the General Counsel makes that showing, the burden shifts to the employer to "demonstrate that the same action would have taken place even in the absence of the protected conduct." *Septix Waste, Inc.,* 346 NLRB 494, 496 (2006). An employer "cannot simply present a legitimate reason for its action, but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected activity." W.F. Bolin Co., 311 NLRB 1118, 1119 (1993).

Further, if the employer's proffered reasons are pretextual - either false or not actually relied on - the employer fails by definition to meet its burden of showing it would have taken the same action for those reasons absent the protected activity. See *Boothwyn Fire Co. No. 1*, 363 NLRB No. 191, slip op. at 7 (2016); *Pro-Spec Painting, Inc.,* 339 NLRB 946, 949 (2003); and *Hays Corp*., 334 NLRB 48, 49 (2001).

Here, Rivera clearly engaged in protected activity by virtue of the grievance filed on October 28, 2015. Moreover, I find the employer was aware of that activity. Rivera's grievance was faxed successfully to the Respondent, to the correct fax number where Respondent acknowledges it receives its faxes. I do not credit Chajmovic's nor Gottlieb's claims that they did not receive the grievance prior to Rivera's discharge.[17]

As for animus, I find the timing of Respondent's decision to terminate Rivera, just one day after Rivera filed a formal grievance, which in turn was one day after Chajmovicz had already decided on a much lesser discipline, is compelling evidence of animus in this case. In addition, I find Respondent's pattern of repeatedly issuing multiple disciplines in the immediate aftermath of Rivera's union and concerted activity to bolster this specific finding of animus. I also note the prior instances of animus exhibited toward Rivera, including the statements attributed to both Chajmovicz and Gottlieb, still further support this finding.

Finally, I find Chajmovic's explicit denial of any knowledge regarding Rivera's porter grievance, in the face of the November 3, 2015 audio recording which demonstrated otherwise, to be a pretextual excuse designed to avoid liability, and further evidence of Respondent's animus. Therefore, I find that Rivera's concerted activity was a substantial and motivating reason for his discharge, and as such, I find the General Counsel has met its initial prima facie burden.

With the burden shifted to Respondent to demonstrate that it would have taken the same action even in the absence of the protected conduct, I find that Respondent has failed to meet its burden, for a series of reasons.

Respondent puts forth not one, not two, but three wholly unpersuasive explanations for why it claims that the October 28, 2015 porter grievance was not the reason for the change in Rivera's discipline from a warning to a discharge. First, it maintains that neither Chajmovicz nor Gottlieb ever received the grievance, and therefore, it could not have affected the decision to discharge Rivera. This, despite clear evidence that the Union's faxed grievance was successfully sent to the correct fax number, from which Chajmovicz acknowledged receiving other faxes, and evidence that both Chajmovicz and Gottlieb were aware of the grievance prior

[17] Respondent's failure to call either of the administrative staff it appears indirectly to blame for not forwarding the grievance to Chajmovicz and/or Gottlieb, or to produce their fax/email records in support of its claim only serves to bolster this finding of knowledge.

to Rivera's discharge. As discussed above, I reject Respondent's contention that it was unaware of the October 28, 2015 grievance.[18]

Second, Respondent maintains that the grievance would not have bothered Chajmovicz in any event because, as it inexplicably argued repeatedly throughout the trial, there was never a porter position to apply for in the first place. This, despite clear evidence that Respondent posted for a porter position, on its own letterhead, immediately after Rivera initially raised the issue through the Union, and does not deny that someone started working in a porter position he did not previously occupy at the time Rivera initially sought to apply for the position. Indeed, I find the opposite to be true. Respondent, and in particular Chajmovicz, was annoyed by Rivera's pushing for that position, and had every reason to be even more angered by his filing of the first-ever grievance in this workplace.

Third, Respondent maintains that Chajmovicz was not really the decision maker in Rivera's discharge at all, but rather, that it was Gottlieb who made the decision, and that he did not know about Rivera's porter grievance. As an initial matter, as discussed above, there was specific evidence that Gottlieb did know about the grievance prior to Rivera's discharge, though it is unclear whether he learned directly or from Chajmovicz.

Moreover, I find the notion that Chajmovicz was not empowered to discharge Rivera to be less than credible, in light of the management structure testified to by Respondent's own witnesses. Gottlieb was not directly involved with onsite management, as he was responsible for indirectly overseeing approximately 2500 units across 15 to 20 buildings at any given time. Chajmovicz, by contrast, worked onsite, and was responsible for overall management of the building. Any information Gottlieb received about Rivera would necessarily have come from Chajmovicz. Indeed, Gottlieb's own testimony acknowledged that the decision to terminate was recommended by Chajmovicz. So, even were I to accept the dubious notion that Chajmovicz was not actually empowered to discharge Rivera on his own, it changes nothing of the analysis where Chajmovicz was able to effectively recommend Rivera's discharge.

In short, I am not persuaded that Respondent would have discharged Rivera, a 10-plus-year employee at the building, had he not made plain his continued pursuit of the porter position through his filing of the first-ever formal grievance one day before his discharge. The fact that Chajmovicz had already decided to issue Rivera only a warning prior to his filing that grievance is in keeping with the fact that no one – not even an employee who was drunk on the job, an actual "capital offense" – had ever been discharged from this workplace. I find nothing of significance occurred between Chajmovicz' October 27, 2015 written warning to Rivera and the October 29, 2015 discharge of Rivera except for the October 28, 2015 grievance. That timing, given the totality of the circumstances in this case, cannot be ignored.

Therefore, I find that Respondent has not met its burden under *Wright Line*, and that it cannot prove it would have taken the same action against Rivera even in the absence of his protected conduct. Indeed, I find that it would have discharged Rivera but for the intervening act of his filing the October 28, 2015 grievance.

[18] In its answer to par. 28 of the complaint, Respondent had admitted that the Union filed a 10/28/2015 grievance on Rivera's behalf regarding a porter position, but denied the allegations of the grievance. It is unclear on its face whether that admission was an acknowledgement of having received the grievance on that date, though that would be a reasonable interpretation, even in the absence of clear evidence that it did.

Accordingly, I find that Respondent violated Section 8(a)(3) or (1) of the Act when it terminated Rivera on October 29, 2015, and therefore, recommend that Rivera be made whole for the unlawful actions taken by Respondent.

E. Respondent violated Section 8(a)(1) of the Act on October 29, 2015, when it advised Rivera not to speak with staff members after he was discharged.

The General Counsel alleges and the Respondent acknowledges that at the end of the October 29, 2015 meeting, in which Rivera was discharged, Gottlieb told Rivera "now that you're a tenant in the building, please do not speak to the employees while they're working, don't go into their workshop." There was no evidence presented that any other tenant was prohibited from speaking to employees at any time or in any particular area, nor would it be expected that such a prohibition would exist.

The General Counsel argues that this statement was an unlawful restriction of Rivera's (and arguably, other employees') core Section 7 right to communicate with each other regarding their terms and conditions of employment. *See Aroostook County Regional Opthalmology* Center, 317 NLRB 218 (1995). Respondent argues this was no more than Gottlieb's making Rivera aware of and enforcing a valid plant rule prohibiting union solicitation of employees while they are on the clock.[19]

When determining whether an employer's statement to an employee tends to interfere with an employee's rights under the Act, the Board asks a simple question: whether the remark tends to interfere with the free exercise of employee rights. *Miller Electric Pump & Plumbing*, 334 NLRB 824 (2001). Here, there appears to be little question that the statement by Gottlieb would tend to interfere with those rights.

As an initial matter, Rivera was not merely a tenant when Gottlieb made this remark to him. He was a recently terminated employee, the lawfulness of whose discharge has been successfully challenged in this very case. Employees found to have been unlawfully terminated remain employees, and still enjoy the protection of the Act. Moreover, even if that were not the case, in the absence of other tenants being similarly prohibited from speaking to their doormen, I can only conclude that this instruction to Rivera was specifically targeting potential conversations about his and their working conditions.

While the Board recognizes an employer's ability, under certain circumstances, to prohibit employees from discussing what would otherwise be protected subjects like their working conditions during periods when those employees are supposed to be actively working, Gottlieb's own words – "now that you're a tenant" (as opposed to an employee) - reveal the fact that employees in this workplace are not prohibited from such communications. I can find no support for the notion that an employer may target one and only one individual, someone who was already unlawfully discharged, from engaging in protected activity.

Accordingly, I find that Respondent violated Section 8(a)(1) of the Act when it told Rivera on October 29, 2015, that he could no longer speak to his coworkers while they are working.

[19] I do not find Gottlieb's instruction to Rivera to be implicated by the Board's recent decision in *Boeing Co.*, 365 NLRB No. 154 (2017), which set forth a new standard for evaluating a facially neutral policy, rule or handbook provision that could reasonably be interpreted to potentially impact Sec. 7 rights, because I do not find this to have been a workplace "rule" at all. Rather, this was a directive given only to Rivera, upon his termination, that clearly limited NLRA-protected conduct.

F. Respondents Silverstone Property Group, LLC, 62–60 99th Street Owner LLC, and California Crown Energy Services, Inc. d/b/a Able Services are jointly and severally liable for remedying Respondent Saxon Hall's unlawful conduct.

The Supreme Court has held that a bona fide purchaser of a business which has knowledge of the seller's unfair labor practices at the time of the purchase, and who continues the business without interruption or substantial change in operations, employee complement, or supervisory personnel, has joint and several liability for remedying the seller's unfair labor practices. *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973). These are known as "Golden State Successors," and in applying this standard, the Board has observed that these successors are in the best position to remedy the predecessor's liability without unfair hardship, because it can account for any potential liability in the purchase price or secure an indemnity clause in the sales agreement. *D.L. Baker, Inc.*, 351 NLRB 515, 520 (2007).

Here, Respondents Silverstone, 62–60, and Able Services stipulated that at the time Respondent 62–60 purchased the Saxon Hall property, and entered into a property management agreement with Respondent Silverstone, which retained Respondent Able to staff and manage the building, Respondent Able hired all of Respondent's service and maintenance employees, and that a majority of Respondent Able's workforce was comprised of Respondent's former employees. (Jt. Exh. 2.) In addition, Respondents Silverstone, 62–60, and Able Services stipulated that they have continued to operate the business of Respondent in basically unchanged form, and are successors to Respondent. (Jt. Exh. 2.)

It is also undisputed that Respondents Silverstone and 62–60 had notice of their potential liability. Indeed, those Respondents stipulated that before executing the asset sales agreement to purchase the Saxon Hall facility, which initiated their joint employer and successor status in this matter, they received a letter from the National Labor Relations Board, dated June 22, 2016, advising that the Board had issued a complaint against Respondent, which alleged that Respondent had unlawfully terminated Rivera. (Jt. Exh. 2, ¶ 9.)

As such, these respondents had actual knowledge of their potential liability to remedy Respondent's alleged unfair labor practices at the time they became successors to Respondent, and I find that Respondents Silverstone and 62–60 are *Golden State* successors under the Act, and responsible for remedying their predecessor Respondent's unlawful conduct.

Moreover, Respondents Silverstone, 62–60, and Able Services stipulated that they co-determine the terms and conditions of employment of the employees represented by the Union at the Saxon Hall building, and that they are joint employers. (Jt. Exh. 1.) Therefore, with regard to Respondent Able, having stipulated to being a joint employer with Respondents Silverstone and 62–60, I find that they are therefore jointly and severally liable for their obligations to employees.[20]

Accordingly, I find that Respondents Silverstone Property Group, LLC, 62–60 99th Street Owner LLC, and California Crown Energy Services, Inc. d/b/a Able Services are jointly and severally liable for remedying Respondent's unlawful conduct.

[20] Notwithstanding the Board's recent ruling in *Hy-Brand Industrial Contractors, Ltd.* et al., 365 NLRB No. 156 (2017), which altered the standard regarding what may constitute a joint employer, there has been no change in the liability of entities found to be joint employers, namely, that they are jointly and severally liable for their obligations to employees under the Act.

Conclusions of Law

1. On or about October 15, 2015, Respondent violated Section 8(a)(3) and (1) of the Act by issuing the Charging Party Luis Rivera multiple written warnings in retaliation for his protected union and concerted activity.

2. On or about October 29, 2015, Respondent violated Section 8(a)(3) and (1) by unlawfully terminating Rivera's employment in retaliation for his protected union and concerted activity.

3. On or about October 29, 2015, Respondent violated Section 8(a)(1) by unlawfully instructing Rivera not to speak to his co-workers.

4. The above violations are unfair labor practices within the meaning of the Act.

5. Respondent has not otherwise violated the Act.

6. Respondents Silverstone, 62–60 and Able Services are joint employers with each other, and Golden State successors of Respondent, and therefore, jointly and severally liable for remedying Respondent's unlawful conduct.

Remedy

As I have concluded that the Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Respondent, having discriminatorily disciplined and discharged Luis Rivera, must rescind its unlawful disciplines, offer Rivera reinstatement and make him whole for any loss of earnings and other benefits resulting from that discrimination.

Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). The Respondent shall also file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters and shall also compensate the discriminatees for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year. *Latino Express, Inc.*, 359 NLRB No. 44 (2012).

In addition, Respondent is ordered to reimburse Rivera for all search-for-work-related expenses regardless of whether he received interim earnings in excess of these expenses overall or in any given quarter. *King Soopers, Inc.*, 364 NLRB No. 93 (2016).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[21]

ORDER

The Respondents, Saxon Hall Management, LLC, Silverstone Property Group, LLC, 62-60 99th Street Owner II LLC, and California Crown Energy Services, Inc. d/b/a Able Services, their officers, agents, and representatives, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for engaging in activity protected by Section 7 of the Act;

(b) Instructing employees that they may not speak to other employees regarding their working conditions during worktime, while allowing other nonwork-related discussions;

(c) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, offer Luis Rivera full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Luis Rivera whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision.

(c) Compensate Luis Rivera for his search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings.

(d) Compensate Luis Rivera for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 29, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful disciplines and discharge of Luis Rivera and, within 3 days thereafter, notify him in writing that this has been done and that neither those disciplines nor discharge will be used against him in any way.

(f) Preserve, and within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel

[21] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its Saxon Hall location in Brooklyn, NY the attached notice marked "Appendix."[22] Copies of the notice, on forms provided by the Regional Director for Region 29 after being signed by the Respondents' authorized representatives, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondents customarily communicate with its employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at the Saxon Hall building at any time since October 15, 2015.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. January 29, 2018

Jeffrey P. Gardner
Administrative Law Judge

[22] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Bargain collectively through representatives of their own choice
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising these rights.

WE WILL NOT discharge or otherwise discriminate against any employee for engaging in activity protected by Section 7 of the Act.

WE WILL NOT instruct employees that they may not speak to other employees regarding their working conditions during worktime, while allowing other nonwork-related discussions.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights under Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Luis Rivera full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL Make Luis Rivera whole for any loss of earnings and other benefits suffered as a result of the discrimination against him.

WE WILL compensate Luis Rivera for his search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings.

WE WILL compensate Luis Rivera for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 29, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL within 14 days from the date of this Order, remove from our files any reference to the unlawful disciplines and discharge of Luis Rivera, and

WE WILL within 3 days thereafter, notify him in writing that this has been done.

Saxon Hall Management, LLC

_____
(Employer)

Dated _____ By _____
(Representative) (Title)

Silverstone Property Group, LLC

_____
(Employer)

Dated _____ By _____
(Representative) (Title)

62-60 99th Street Owners II, LLC

_____
(Employer)

Dated _____ By _____
(Representative) (Title)

California Crown Energy Services, Inc.
d/b/a Able Services

_____
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Two Metro Tech Center, 100 Myrtle Avenue, Suite 5100, Brooklyn, NY 11201-3838
(718) 330-7713, Hours: 9 a.m. to 5:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/29-CA-167016 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (718) 765-6190.